

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
FORT MYERS DIVISION**

MICHAEL D. HARRIS,

Plaintiff,

v.

Case No: 2:20-cv-391-SPC-MRM

COMMISSIONER OF SOCIAL  
SECURITY,

Defendant.

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**OPINION AND ORDER**<sup>1</sup>

Before the Court is the Report and Recommendation of United States Magistrate Judge Mac R. McCoy. ([Doc. 24](#)). Judge McCoy recommends granting the Commissioner’s Motion to Dismiss Plaintiff’s Complaint ([Doc. 10](#)) for lack of subject matter jurisdiction with leave to amend. Plaintiff, proceeding *pro se*, filed an “Answer to the Court,” which the Court construes as an objection to the R&R. The Government did not respond to the objection. Thus, the R&R is ripe for review.

After reviewing the findings and recommendations, a district judge “may accept, reject, or modify, in whole or in part,” the magistrate judge’s report and

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<sup>1</sup> Disclaimer: Documents hyperlinked to CM/ECF are subject to PACER fees. By using hyperlinks, the Court does not endorse, recommend, approve, or guarantee any third parties or the services or products they provide, nor does it have any agreements with them. The Court is also not responsible for a hyperlink’s availability and functionality, and a failed hyperlink does not affect this Order.

recommendation. 28 U.S.C. § 636(b)(1). The district judge must “make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made.” *Id.*; *but see Symonette v. V.A. Leasing Corp.*, 648 F. App’x 787, 790 (11th Cir. 2016) (“[W]hen a party fails to object to a magistrate judge’s report, we review only for plain error and only if necessary in the interests of justice.” (citation omitted)).

After a careful and complete review of the findings and recommendations, and the record, the Court accepts and adopts the Report and Recommendation over Harris’s objections. Judge McCoy properly considered all possible bases for Harris’s claims considering his *pro se* status and still found the Complaint to be lacking. Harris’s objection identifies no argument outside those considered by Judge McCoy. The Court thus dismisses the Complaint without prejudice. Because of Harris’s *pro se* status, however, the Court will grant him one last chance to present a viable basis for his claims and for the Court’s subject matter jurisdiction over certain claims consistent with this Opinion and Order and the Report and Recommendation.<sup>2</sup>

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<sup>2</sup> Harris says that the Court can either give him justice and schedule a trial or dismiss his complaint. If Harris wishes to dismiss this case, he can do so by filing a notice of dismissal under Federal Rule of Civil Procedure 41(a)(1)(A)(i).

Accordingly, it is now

**ORDERED:**

The Report and Recommendation ([Doc. 24](#)) is **ACCEPTED** and **ADOPTED**, and the findings incorporated herein.

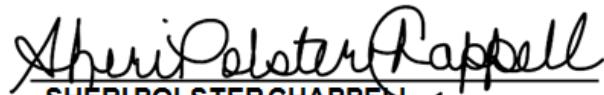
(1) The Defendant's Motion to Dismiss ([Doc. 10](#)) is **GRANTED**.

(2) The Complaint ([Doc. 1](#)) is **DISMISSED without prejudice**.

(3) Plaintiff may file an amended complaint by **November 23, 2021**.

**Failing to file an amended complaint will cause the closure of the case without further notice.**

**DONE and ORDERED** in Fort Myers, Florida on November 9, 2021.

  
SHERI POLSTER CHAPPELL  
UNITED STATES DISTRICT JUDGE

Copies: All Parties of Record